

REMARKS

This paper is submitted in response to the Office action mailed January 8, 2007.

The Examiner is thanked for his indication that the prior rejections to claims 1-63 under 35 USC 112, second paragraph, were withdrawn.

The constructive election of prior claims 64-66 is noted. Claims 67-69 herein correspond to prior-filed claims 64-66 with the exception of the following preamble phrase, which has been added into what was original claim 64: “wherein an attribute is an inherent characteristic of a message alternative and an attribute value is a particular instantiation of the attribute.” The relevance of this language is discussed below. Claims 67-69 should now be entered into the case, as this paper is submitted in conjunction with a request for continued examination. Thus, the considerations of 37 CFR 1.142(b) and MPEP 821.03 noted by the Examiner no longer apply.

Turning to the art rejections, claims 1, 7, 9-10, 13-14, 16-18, 45-46, 48-50, and 58 were rejected once again under 35 USC 102(e) as anticipated by Merriman et al., U.S. Published Patent Application No. 2002/0099600. This rejection, however, again is traversed.

By way of background, the Examiner is reminded that claim 1 concerns “multiattribute analysis and optimization” wherein “attributes and attribute values of message alternatives” are used to improve the “stage-to-stage performance of said message alternatives.” The claim also requires “a multiattribute system that describes the message alternatives in terms of the attributes and the attribute values.” As described throughout the written description, the “attributes” and “attribute values” are characteristics of the message alternatives (or so-called “creatives”) themselves. (See, e.g., the discussion beginning on page 17 and continuing through page 23). A “multiattribute system” is a collection of attributes. As used in the written description, an “attribute” is an inherent characteristic (e.g., text, graphics, format, or the like) of a message alternative. Thus, in the context of the present invention, an attribute is inseparable from the message alternative itself. Merriman et al., in contrast, at [0038] describe the use of “context information that may be associated for example with the Internet: user id (TCP/IP address for example), ad id (which may be arbitrarily assigned), page id (such as a World Wide Web page), site id (such as a World Wide Web site), time of day (either at the site of the computer running the predictive model or the time based on the TCP/IP address), day of the week, and date.” As described in [0039], empirically measured data and/or initial suppositions about each advertisement are then used to initially establish a predictive model to assign weights for different advertisements. For example, “the time of advertisements are more favorably run may depend upon seasonal factors such as advertisements for summer clothing being more heavily favored in late spring and early summer. Similarly, the predictive model may also assign different weights to different locations where the user is located. ... Similarly, the time of day, the frequency of display to either all users or a given user, or [other factors may be used]. The predictive model may also be modified by examining the results of the CPA to maximize revenue by, for example, searching for advertisements that seem to be outperforming other advertisements in the same category of goods or services.”

As can be seen then, the Examiner has equated the “context information” in Merriman et al. to the “attributes” of the present invention to find alleged anticipation. Respectfully, this is error.

In particular, Merriman et al. describe an advertising system in which a decision about which advertisement to select is based on an analysis of demographic or other information unrelated to the advertisement (or the characteristics of the advertisement) itself. In other words, there is no disclosure or suggestion in Merriman et al. to base the ad selection on a given inherent characteristic (such as color, animation, message wording, or the like) of the advertisement variants, let alone on multiple such characteristics (a “multiattribute” approach) of a given advertisement. The system does not appear to track or use ad attributes for any purpose. The “multiattribute” nomenclature of the present invention (as described in the lexicon on page 21-22) is neither disclosed nor implicit within the four corners of the cited reference. Thus, the pending anticipation rejection was misplaced and should be withdrawn.

To further emphasize the nature of the claimed “attributes” and the “multiattribute system,” claim 1 has been amended to describe the “attribute” as “an inherent characteristic of a message alternative.” As is clear from the written description, the “inherent characteristic” of the message alternative is some element or characteristic of the creative, e.g., text, graphics, color, style, format, animation, or the like, and that is inseparable therefrom. Merriman et al.’s “context information,” in contrast, concerns the circumstances that surround the delivery of the advertisement.

Thus, amended claim 1 is now sufficiently clear that the historical performance data informs the determination about which attributes and attribute values (of the message alternatives) provide better performance, and that the allocation of message alternatives (e.g., for a next stage) is then based on this determination. When an “attribute” is viewed in this, its proper context, this use of multiattribute “analysis and optimization” is neither disclosed nor remotely suggested by Merriman et al. In particular, the Manual of Patent Examining Procedure (MPEP) § 2131 provides that a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. ... ‘The identical invention must be shown in as complete detail as contained in the ... claim.’ The elements must be arranged as required by the claim.” (citations omitted, emphasis supplied). This rigid legal standard is not met by Merriman et al.

As Merriman et al. cannot and does not anticipate independent claim 1, the reference also does not anticipate any of dependent claims 7, 9-10, 14-14, 16-18, 45-46, 48-50 or 58.

Claims 2-6, 8, 11-12, 15, 19-26, and 59-60 were rejected under 35 USC 103(a) as being unpatentable over Merriman et al., in view of Tamayo et al., U.S. Patent No. 6,836,773. Tamayo et al. are alleged to disclose pre-processing of web data to remove redundant or irrelevant information. Even if one of ordinary skill in the art would have been motivated to combine the references, which Applicants do not concede, the combination of these references is not the invention of any of claims 2-6, 8, 11-12, 15, 19-26 and 59-60 because of the underlying deficiencies in the Merriman et al. reference. Of course, the Office bears the burden of establishing prima facie obviousness in the first instance, and any proposed combination of these references does not disclose or suggest basing an ad selection in a given stage of a multi-stage advertising campaign on a given characteristic (such as color, animation, message wording, or the like) of the advertisement variants, let alone on multiple such characteristics (a “multiattribute” approach) of a given advertisement, as positively recited.

Claims 27-34 and 41-44 were rejected under 35 USC 103(a) as being unpatentable over Merriman et al., further in view of Tamayo et al., further in view of Dunning et al., U.S. Published Patent No. 2003/0229537. Dunning et al. is said to teach an expected value algorithm computation. This rejection is traversed for the reasons set forth above. In particular, even if one of ordinary skill in the art would have been motivated to combine the references, which Applicants do not concede, the combination of these references is not the invention of any of

claims 27-34 and 41-44 because of the underlying deficiencies in the Merriman et al. reference previously discussed. In particular, the references do not disclose or suggest the multiattribute features of the present invention.

Claims 35-40 were rejected under were rejected under 35 USC 103(a) as being unpatentable over Merriman et al., further in view of Tamayo et al., further in view of Marsh et al., U.S. Patent No. 5,848,397. Marsh et al. are said to describe dividing advertisements into prioritized advertised queues. Once again, and with respect, this rejection is traversed for the reasons set forth above. In particular, even if one of ordinary skill in the art would have been motivated to combine the references, which Applicants do not concede, the combination of these references is not the invention of any of claims 35-40 because of the underlying deficiencies in the Merriman et al. reference. The cited combination of references still do not disclose or suggest the multiattribute features of the present invention.

Claims 47 and 51-52 were rejected under 35 USC 103(a) as being unpatentable over Merriman et al., in view of Dunning et al. This rejection is also traversed for the reasons set forth above with respect to Merriman et al. The cited combination does not disclose or suggest the underlying multiattribute features.

Claims 53-57 were rejected under 35 USC 103(a) as being unpatentable over Merriman et al., in view of Dunning et al., further in view of Montague, U.S. Patent No. 6,954,731. Montague is said to teach the report generation functionality for producing custom reports. This rejection is traversed given the deficiencies in the Merriman et al. reference. The cited combination of references does not disclose or suggest the multiattribute features of any of claims 1, 58 or 64.

As noted above, with one exception new claims 67-69 correspond to claims 64-66 that were the subject of the constructive election. In particular, independent claim 67 includes a definition that an “attribute” is an inherent characteristic of a message alternative (and an attribute value is a particular instantiation of the attribute). As noted above, the Merriman et al. reference does not operate on any such inherent characteristics of a creative.

Accordingly, a Notice of Allowance is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "David H. Judson", with a long horizontal line extending to the right.

By _____
David H. Judson, Reg. No. 30,467
Attorney for Applicants